INDEX TO PETITIONER'S APPENDIX TO PETITION FOR WRIT OF CERTIORARI

EXHIBIT 1

Criminal Complaint filed in Las Vegas Township Justice Court, Las Vegas, Clark County, Nevada

EXHIBIT 2

Petition for Writ of Mandamus or in the Alternative Petition for Writ of Certiorari filed with the Supreme Court of Nevada on January 4, 2000

EXHIBIT 3

Order of Supreme Court of Nevada denying Petition for Writ of Mandamus Or In The Alternative Petition for Writ of Certiorari, dated January 5, 2000

EXHIBIT "1"

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	CASE NO. 98M08860X
Plaintiff,	)	
-vs-	)	
	)	
JAMES EDWARD GUESMAN #089868,	)	CRIMINAL COMPLAINT
	)	
Defendant.	)	
	)	

The Defendant above named having committed the crime of BATTERY CONSTITUTING DOMESTIC VIOLENCE (Misdemeanor - NRS 200.481; 200.485; 33.018), in the manner following, to wit: That the said Defendant, on or about the 5th day of May 1998, at and within the County of Clark, State of Nevada, did then and there wilfully and unlawfully use force or violence against or upon the person of his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child, to-wit: COLLETTE PUTNAM, by grabbing her around the neck and/or by slamming the head of the said COLLETTE PUTNAM against the wall and/or by threatening to "knock her out".

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace of dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.

7/15/98

98M08860X/jes
LVMPD EV#9805060607
BATT DV - M
(TK5)

EXHIBIT "2"

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES E. GUESMAN

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA AND THE HONORABLE SALLY LOEHRER, DISTRICT COURT JUDGE

Respondents.

CASE NO. _____
DISTRICT COURT NO. C154374

PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Petitioner, James E. Guesman, and through his attorney, John J. Graves, Jr., Esq., a hereby makes application to this Honorable Court for a W of Mandamus directed to the Respondents, or in t alternative, for a Writ of Certiorari. The Petition for Writ Mandamus and Petition for Writ of Certiorari are based the following Memorandum of Points and Authorities well as the exhibits attached hereto.

DATED this 3rd day of January, 2000.

RESPECTFULLY SUBMITTED

_____
JOHN J. GRAVES, JR., ESQ.
601 SOUTH SIXTH STREET
LAS VEGAS, NV 89101
ATTORNEY FOR PETITIONER
JAMES GUESMAN

/////

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE PETITION FOR CERTIORARI

STATEMENT OF THE CASE

Petitioner, James Guesman, a Nevada attorney, was charged with battery of his live-in companion, Collette Putnam, on or about July 15, 1998. Exhibit "A" hereof. At the Trial before a visiting Judge in Las Vegas Township Justice Court, Petitioner was convicted of battery on or about October 9, 1998. Upon Appeal to the District Court, the conviction was affirmed before the Honorable Sally Loehrer, District Court Judge, on or about December 6, 1999.

Judge Loehrer has stayed the remand of the case from District Court to Justice Court until January 5, 2000, as defense counsel advised the Court that Petitioner would file an extraordinary writ before this Court.

Counsel for Petitioner has filed with this Court a concomitant Motion to Stay proceedings before the Las Vegas Township Justice Court pending the resolution of these Petitions for Writ.

STATEMENT OF THE ISSUES

The issue before this Court is whether the District Court properly exercised its discretion in the review of the evidence taken at the Trial before the Justice Court. Judge Loehrer, at the conclusion of the oral argument (Exhibit "B" hereof, transcript, 30:10-32:21) upheld the conviction. Essentially, she decided that the alleged victim received a lump on her head, and that the Justice Court determined that Collette's credibility was greater than Petitioner Guesman's. That, in the District Court's mind, ended the inquiry. Petitioner's position is that the District Court's inquiry was too narrow; the District Court did not consider other evidence or inconsistencies in the evidence adduced by the State of Nevada and Petitioner which would detract from substantial evidence.

/////

ARGUMENT
I
EXTRAORDINARY WRIT BACKGROUND

Art. 6, § 4 of the Nevada Constitution grants th Court jurisdiction to issue writs of mandamus and certiora Thus, the Petitioner submits that this Court possess jurisdiction to entertain these Petitions.

> Art. 6, § 4 provides in part:
> .....The Court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warrants, and habeas corpus, and also writs necessary or proper to the complete exercise of its appellate jurisdiction....

Art. 6, § 6 grants the District Courts final appella jurisdiction in cases arising in Justice Courts.

> NRS 34.160 defines the writ of mandamus:
> **34160. Writ may be issued by supreme court and district courts; when writ may issue.**
>
> The writ may be issued by the supreme court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; . . .

NRS 34.020 (1) and (2) defines the writ of certiora

> **34.020. Writ may be granted by supreme court and district courts; when writ may issue.**
>
> 1. This writ may be granted, on application, by the supreme court, a district court, or a judge of the district court. When the writ is issued by the district court or a judge of the district court it shall be made returnable before the district court.
> 2. The writ shall be granted in all cases when an inferior tribunal, board or

officer; exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy.

3. In any case prosecuted for the violation of a statute or municipal ordinance wherein an appeal has been taken from a justice's court or from a municipal court, and wherein the district court has passed upon the constitutionality or validity of such statute or ordinance, the writ shall be granted by the supreme court upon application of the state or municipality or defendant, for the purpose of reviewing the constitutionality or validity of such statute or ordinance, but in no case shall the defendant be tried again for the same offense.

. . . .

See Zamarippa v. First Judicial District Court, 103 Nev. 638, 747 P.2d 1386 (1987) (a writ of certiorari is granted in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded its jurisdiction, and there is no appeal or plain, speedy, and adequate remedy).

II
THE DISTRICT COURT DID NOT PROPERLY REVIEW THE EVIDENCE ADDUCED BEFORE THE JUSTICE COURT

In giving credence only to the fact of the alleged victim's bump on the head, and the fact that the Justice Court determined credibility, the District Court did not properly apply the standard of "substantial evidence."

In DeLee v. Roggen, 111 Nev. 1453, 907 P.2d 168 (1995), this Court declared, at 1456, that:

> This court will not disturb the findings of a trial court unless the findings "are clearly erroneous and not based on substantial evidence." Nevada Ins. Guaranty v. Sierra

> Auto. Ctr., 108 Nev. 1123, 1126, 844 P. 2d 126, 128 (1992). In making such a determination, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. "Pace v. Linton, 97 Nev. 103, 103, 625 P.2d 84, 85 (1981).. . .
>
> Cf., NRCP 52. See also, Koza v. State, 100 Nev. 2 250-251, 681 P.2d 44 (1984).
>
> . . . .

Not only did the District Court fail (1) to consider the evidence before the Justice Court, it (2) gave conclus effect to the fact of the injury, and the Justice Cou assessment of the credibility of witnesses as the o evidence considered. Granted, a trial court's assessment the credibility of witnesses must be considered, but t Court has stated that a reviewing court must give "d regard" to the opportunity of the trial court to judge credibility of witnesses, **not** "conclusive" regard. See al United States v. Nordbrook, 38 F.3d 440, 445 (CA 9 199 See also, Utley v. Airoso, 86 Nev. 116, 118, 464 P.2d 7 (1970) (when the district court decides on the merits of case, the "substantial evidence" rule then becomes standard by which the Supreme Court must consider appeal to determine whether there is substantial evidence **the record** to support the findings and judgment of district judge).

Further, in Macintosh v. California Fed. Sav., Nev. 393 (1997), this Court determined that:

> The trier of fact's verdict will not be overturned if it is supported by substantial evidence, **unless the verdict was clearly erroneous when viewed in light of all the evidence presented** . . . .
> (citing cases) (Emphasis added).
>
> . . . .

In this case, of course, the District Court in review the transcript of the Justice Court did not consider **all** evidence presented, merely the Justice Court's appar belief that the alleged victim was more credible th Guesman, the Petitioner, and that an injury had occurred

her head.

The District Court briefs of the parties are set out as Exhibit "C" (Petitioner's) and "D" (State's) to serve as a redaction of the transcript which can be supplied upon request by the Court.

CONCLUSION

For the reasons above expressed, this Court is respectfully requested to grant the Motion for Stay of Imposition of Sentence, and grant the Petitions, with a remand to a different District Court for a review of the transcript of the Justice Court with instructions to review the entire record in light of the legal authority filed by the parties. Pursuant to NRS 34.060 this Court is requested to Order that a certified copy of all proceedings below be forwarded to this Court for review, and that this Court allow a briefing schedule for the parties to more fully brief the issue set out in the Petitions.

These arguments are further based upon the due process clauses of the United States Constitution and its amendments, as well as the Nevada Constitution.

DATED this 3rd day of January, 2000.

RESPECTFULLY SUBMITTED,

JOHN J. GRAVES, JR., ESQ.
601 SOUTH SIXTH STREET
LAS VEGAS, NV 89101
ATTORNEY FOR PETITIONER
JAMES GUESMAN

EXHIBIT "3"

IN THE SUPREME COURT OF THE
STATE OF NEVADA

JAMES E. GUESMAN,	)	
	)	NO. 35435
Petitioner,	)	
-vs-	)	
	)	
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND, THE HONORABLE SALLY L. LOEHRER, DISTRICT JUDGE	)	FILED JAN 05 2000 JANETTE M. BLOOM CLERK OF SUPREME COURT BY:_____ CHIEF DEPUTY CLERK
Respondents,	)	
and	)	
THE STATE OF NEVADA	)	
	)	
Real Party in Interest.	)	
_____	)	

ORDER DENYING PETITION

This original petition for a writ of mandamus or certiorari challenges an order of the district court affirming petitioner's misdemeanor conviction in the justice court. Having reviewed the petition and supporting documentation, we are not persuaded that this Court's intervention by way of extraordinary writ is warranted. Accordingly, we deny petition.

It is so ORDERED.

_____ J.
Young

_____ J.
Agosti

_____ J.
Leavitt